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18 Attorneys for Defendants New York Life Insurance
19 Company and New York Life Insurance and
20 Annuity Corporation

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA

23 OLGA ORTMANN, as an individual
24 and on behalf of all others similarly
25 situated,

26 Plaintiff,

27 v.

28 NEW YORK LIFE INSURANCE
COMPANY, a corporation; NEW
YORK LIFE INSURANCE AND
ANNUITY CORPORATION, a
corporation; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 3:07-CV-02506-WHA

**DEFENDANTS NEW YORK LIFE
INSURANCE AND NEW YORK
LIFE INSURANCE AND ANNUITY
CORPORATION'S NOTICE OF
MOTION AND MOTION TO
STRIKE**

[FED. R. CIV. PROC. 12(f)]

Judge: Hon. William Alsup
Date: July 5, 2007
Time: 8:00 a.m.
Courtroom: 9, 19th Floor

**TO THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA, AND TO PLAINTIFF OLGA
ORTMANN:**

PLEASE TAKE NOTICE THAT on July 5, 2007, at 8:00 a.m., or as soon thereafter as counsel may be heard in Courtroom 9 of the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California 94102-3483, pursuant to Federal Rule 12(f), Defendants New York Life Insurance Company and New York Life Insurance and Annuity Corporation ("Defendants") will and hereby do move for an order striking the following portions of Plaintiff's Complaint ("Complaint") on the grounds that the Complaint contains irrelevant and/or improper matter:

**ANY AND ALL LANGUAGE CONCERNING PUNITIVE AND
EXEMPLARY DAMAGES**

SECOND CAUSE OF ACTION

1. Paragraph 29, in its entirety:
"Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and members of the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff's rights and the rights of the Plaintiff Class. Plaintiff and members of the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court."

THIRD CAUSE OF ACTION

2. Paragraph 36, in its entirety:

“Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and members of the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff’s rights and the rights of the Plaintiff Class. Plaintiff and members of the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.”

FOURTH CAUSE OF ACTION

3. Paragraph 43, in its entirety:

“Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and members of the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff’s rights and the rights of the members of the Plaintiff Class. Plaintiff and members of the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.”

PRAYER FOR RELIEF

4. Prayer for Relief, paragraph 13, page 24, line 25, in its entirety: “For punitive and exemplary damages.”

**CERTAIN LANGUAGE CONCERNING A FOUR YEAR STATUTE OF
LIMITATIONS**

SECOND CAUSE OF ACTION

5. Paragraph 27, page 11, lines 14 through 15 “during the four (4) years preceding the filing of the Complaint.”

THIRD CAUSE OF ACTION

6. Paragraph 34, page 13, lines 6 through 7: “during the four (4) years preceding the filing of this Complaint.”

FOURTH CAUSE OF ACTION

7. Paragraph 41, page 15, lines 1 through 3: “During the four (4) years preceding the filing of this Complaint.”

**ANY AND ALL LANGUAGE CONCERNING PENALTIES PURSUANT TO
SECTION 558 OF THE CALIFORNIA LABOR CODE**

FIFTH CAUSE OF ACTION

8. Paragraph 48, page 16, lines 21 through 22: “Additionally, Plaintiff and members of the Plaintiff Class are entitled to penalties under *Labor Code* § 558.

**ANY AND ALL LANGUAGE CONCERNING CLAIMS FOR
DISGORGEMENT THAT CANNOT BE BROUGHT UNDER THE UNFAIR
COMPETITION LAW**

TWELFTH CAUSE OF ACTION

9. Paragraph 85, page 23, lines 21 through 22, the words: “and profits to be disgorged from defendants.”

PRAYER FOR RELIEF

10. Paragraph 4, page 24, line 5, the words: “and disgorged profits from the unlawful business practices of defendants.”

This motion is based upon this notice, the accompanying memorandum of points and authorities, the accompanying proposed order, all pleadings and papers on file in this action, and on such other matters as may be presented to the court at the time of hearing.

Dated: May 24, 2007

MORGAN, LEWIS & BOCKIUS LLP

By /s/ JILL A. PORCARO
Jill A. Porcaro
Attorneys for Defendants
NEW YORK LIFE INSURANCE
COMPANY and NEW YORK LIFE
INSURANCE AND ANNUITY
CORPORATION